

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rebecca Ho	Team: Squad #3	CCRB Case #: 201505558	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 07/03/2015 10:25 PM	Location of Incident: 109-31 204th Street	Precinct: 103	18 Mo. SOL 1/3/2017	EO SOL 1/3/2017	
Date/Time CV Reported Mon, 07/06/2015 1:12 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 07/06/2015 1:12 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Walter Warkenthien	07820	953559	113 PCT
2. POM Brett Devine	17862	951678	113 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Brett Devine	Discourtesy: PO Brett Devine spoke rudely to § 87(2)(b)	
B.POM Walter Warkenthien	Discourtesy: PO Walter Warkenthien spoke rudely to § 87(2)(b)	
C.POM Walter Warkenthien	Abuse: PO Walter Warkenthien threatened to arrest § 87(2)(b)	
D.POM Brett Devine	Abuse: PO Brett Devine damaged § 87(2)(b)'s property.	
E.POM Walter Warkenthien	Abuse: PO Walter Warkenthien damaged § 87(2)(b)'s property.	

Case Summary

On July 3, 2015, at 10:25 p.m., PO Brett Devine and PO Walter Warkenthien observed § 87(2)(b) lighting fireworks at the corner of 204th Street and Hollis Avenue in Queens. § 87(2)(b) fled into the side door of 109-31 204th Street in Queens and locked officers outside. PO Devine and PO Warkenthien knocked on the side door and yelled “This is the police! Open up!” They used the word “fuck” in numerous contexts while ordering § 87(2)(b) to open the door (**Allegations A and B**). Mrs. § 87(2)(b) came to the side door and asked who was there. Then, § 87(2)(b) came to the side door and spoke with PO Warkenthien while Mrs. § 87(2)(b) asked § 87(2)(b) about the officers. § 87(2)(b) informed Mrs. § 87(2)(b) he fled inside when officers chased him. Meanwhile at the side door, § 87(2)(b) asked PO Warkenthien if he had a search warrant. When he said no, she closed the door and called 911. PO Warkenthien kicked at the side door threatening to enter and arrest them (**Allegation C**). PO Devine went to the front door and was kicking at it too. After additional units arrived, § 87(2)(b) voluntarily stepped out of the house to surrender himself. Damage was incurred to the front and side doors of the house from PO Devine and PO Warkenthien kicking them in (**Allegations D and E**).

Mediation, Civil and Criminal Conviction Histories

- This case is ineligible for mediation due to property damage.
- On July 28, 2015, a request to determine if a Notice of Claim was filed was submitted; confirmation from the Office of the Comptroller will be forwarded upon receipt (65 days before deadline).

- § 87(2)(b)
- § 87(2)(b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b)
- § 87(2)(b) and § 87(2)(b) have never filed a complaint with the CCRB.
- PO Brett Devine has been a member of the service for 3 years and this is the first CCRB complaint against him.
- PO Walter Warkenthien has been a member of the service for 3 years and there is one substantiated CCRB allegation against him:
 - In case 201400277, an allegation that PO Warkenthien searched a vehicle was substantiated; formalized training was recommended and imposed by the NYPD.

Finding and Recommendations

Explanation of Subject Officer Identification

PO Devine is listed as § 87(2)(b)'s arresting officer. PO Devine acknowledged he and PO Warkenthien chased § 87(2)(b) to the side door of 109-31 204th Street. PO Devine knocked on the side door with PO Warkenthien but when no one answered, PO Devine went to secure the front door. PO Devine kicked at the front door and admitted to causing damage to the front door. PO Warkenthien acknowledged his role in speaking with § 87(2)(b) and § 87(2)(b) at the side door, and having caused damage to the side door. Consequently, **Allegations A and D** are pleaded against PO Brett Devine and **Allegations B, C and E** are pleaded against PO Walter Warkenthien.

- **Allegation A: Discourtesy – PO Brett Devine spoke rudely to § 87(2)(b)**
- **Allegation B: Discourtesy – PO Walter Warkenthien spoke rudely to § 87(2)(b)**
- **Allegation C: Abuse of Authority – PO Walter Warkenthien threatened to arrest § 87(2)(b)**
- **Allegation D: Abuse of Authority – PO Brett Devine damaged § 87(2)(b) s property.**
- **Allegation E: Abuse of Authority – PO Walter Warkenthien damaged § 87(2)(b) s property.**

§ 87(2)(b) confirmed her mother's version of events. However, § 87(2)(b) could not recall if the officers spoke profanely and did not hear the officers make any threats to her or her mother.

The courts have established that warrantless entries into private homes are presumed unconstitutional. Exceptions to this rule include consent, hot pursuit, as established in People v. Skinner, 284 A.D.2d 906 (2001) (Board Review 03). The courts have held that in order for the hot pursuit exception to exist, officers must have probable cause to arrest an individual while he or she is outside the private location to be entered and the arrest must have been set in motion in a public place, prior to the individual's flight into the private location. Skinner (Board Review 03). In *Police Department v. Matias* (2000), it was recognized that, "profanity is permissible where the officer has resorted to such language in order to forcefully make a point [and] to gain compliance with an order or direction" (Board Review 04). Section 195.05 of the New York Penal Law states that a person is guilty of obstructing governmental administration (OGA) when he intentionally obstructs, impairs or perverts the administration of law or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force or interference, or by means of any independently unlawful act (Board Review 05).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Reviewer: _____
 Title/Signature Print Date